

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOSHUA BROTHERS, as Litigation
Guardian Ad-Litem for REYMON
LEAVELL a single individual,

Plaintiff,

v.

ESTEBAN MONREAL, SCOTT
LAPIERRE, BENJAMIN TIMBS,
MOLLY ACCOMANDO, FRANKLIN
POBLOCKI, JONATHAN GOODWIN,
WALKER DICKSON, AND CITY OF
SEATTLE, a lawful municipal
corporation in the State of Washington,
JOHN DOES ONE THROUGH THREE
,

Defendants.

CASE NO. 2:21-cv-01461-RSL

**STIPULATED
PROTECTIVE ORDER**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket

1 protection on all disclosures or responses to discovery, the protection it affords from public
2 disclosure and use extends only to the limited information or items that are entitled to confidential
3 treatment under the applicable legal principles, and it does not presumptively entitle parties to file
4 confidential information under seal.

5 2. “CONFIDENTIAL” MATERIAL

6 “Confidential” material shall include the following documents and tangible things
7 produced or otherwise exchanged: (1) Medical, psychological, employment, financial and family
8 related records of plaintiff, defendants and/or third parties (including personal financial, medical,
9 psychological or family related materials that are relevant to the action; personal financial,
10 medical, psychological or family related materials, that are not relevant to this action will be
11 redacted; (2) Records that could implicate privacy rights of the individual defendants, plaintiff or
12 third parties, including, but not limited to, personal identifying information (“PII”) such as date of
13 birth, social security number, personal home address, phone number, e-mail address, criminal
14 record number; driver’s license number, and state identification number, provided that this does
15 not extend to the individual defendants’ job duties, job functions, job performance or performance
16 of their duties, or their training, educations history or experience related to their work; (3) personal
17 financial information; (4) passport information; (5) immigration status; (6) unredacted video
18 recordings from officer body camera (with the exception of officer body camera videos released
19 through a previous public disclosure request); (7) any information protected from release by statute
20 and exempt from public disclosure under RCW 10.97 (non-conviction data, except to the extent
21 that it relates to charges pending on the date of the incident that is the subject of this lawsuit),
22 RCW 13.50 (juvenile records), RCW 70.48 (jail and inmate records, except to the extent that it
23 relates to charges pending on the date of the incident that is the subject of this lawsuit), RCW 9.73
24 (recorded conversations), and RCW 42.56, *provided* that nothing in this provision shall limit or
25 prevent the parties from seeking an order for disclosure of any such information that may be
26 relevant within the meaning of Fed.R.Civ.P. 26; (8) unsustained or pending investigations and

1 disciplinary files involving sensitive subjects such as addiction or medical related issues that are
2 private and confidential, *provided* that nothing in this provision shall limit or prevent the parties
3 from seeking any and all such records with respect to individually named parties or any third
4 parties who were involved in the incident which is the subject of this lawsuit; and (9) non-public
5 tactical policies and procedures and training protocols.

6 3. SCOPE

7 The protections conferred by this agreement cover only confidential material (as defined
8 above), but also all copies, excerpts, summaries, or compilations of confidential material.

9 The protections conferred by this agreement do not cover information that is in the public
10 domain or becomes part of the public domain through trial or otherwise.

11 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

12 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
13 or produced by another party or by a non-party in connection with this case only for prosecuting,
14 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the
15 categories of persons and under the conditions described in this agreement. Confidential material
16 must be stored and maintained by a receiving party at a location and in a secure manner that ensures
17 that access is limited to the persons authorized under this agreement.

18 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
19 by the court or permitted in writing by the designating party, a receiving party may disclose any
20 confidential material only to:

21 (a) the receiving party's counsel of record in this action, as well as employees
22 of counsel to whom it is reasonably necessary to disclose the information for this litigation as well
23 as private investigators, paralegals, and/or law clerks working on behalf of counsel of record in
24 this action;

25 (b) the officers, directors, and employees (including in house counsel) of the
26 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties

1 agree that a particular document or material produced is for Attorney's Eyes Only and is so
2 designated;

3 (c) experts and consultants to whom disclosure is reasonably necessary for this
4 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

5 (d) the court, court personnel, and court reporters and their staff;

6 (e) copy or imaging services retained by counsel to assist in the duplication of
7 confidential material, provided that counsel for the party retaining the copy or imaging service
8 instructs the service not to disclose any confidential material to third parties and to immediately
9 return all originals and copies of any confidential material;

10 (f) during their depositions, witnesses in the action to whom disclosure is
11 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
12 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
13 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
14 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
15 under this agreement;

16 (g) the author or recipient of a document containing the information or a
17 custodian or other person who otherwise possessed or knew the information; and

18 (h) mediators and their staff.

19 4.3 Filing Confidential Material. Before filing confidential material or discussing or
20 referencing such material in court filings, the filing party shall confer with the designating party,
21 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
22 remove the confidential designation, whether the document can be redacted, or whether a motion
23 to seal or stipulation and proposed order is warranted. During the meet and confer process, the
24 designating party must identify the basis for sealing the specific confidential information at issue,
25 and the filing party shall include this basis in its motion to seal, along with any objection to sealing
26 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed
and

1 the standards that will be applied when a party seeks permission from the court to file material
2 under seal. A party who seeks to maintain the confidentiality of its information must satisfy the
3 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.
4 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with
5 the strong presumption of public access to the Court's files.

6 5. DESIGNATING PROTECTED MATERIAL

7 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
8 or non-party that designates information or items for protection under this agreement must take
9 care to limit any such designation to specific material that qualifies under the appropriate
10 standards. The designating party must designate for protection only those parts of material,
11 documents, items, or oral or written communications that qualify, so that other portions of the
12 material, documents, items, or communications for which protection is not warranted are not swept
13 unjustifiably within the ambit of this agreement.

14 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
15 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
16 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
17 and burdens on other parties) expose the designating party to sanctions.

18 If it comes to a designating party's attention that information or items that it designated for
19 protection do not qualify for protection, the designating party must promptly notify all other parties
20 that it is withdrawing the mistaken designation.

21 5.2 Manner and Timing of Designations. Except as otherwise provided in this
22 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
23 ordered, disclosure or discovery material that qualifies for protection under this agreement must
24 be clearly so designated before or when the material is disclosed or produced.

25 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
26 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),

1 the designating party must affix the word “CONFIDENTIAL” to each page that contains
2 confidential material. If only a portion or portions of the material on a page qualifies for protection,
3 the producing party also must clearly identify the protected portion(s) (e.g., by making appropriate
4 markings in the margins).

5 (b) Testimony given in deposition or in other pretrial proceedings: the parties
6 and any participating non-parties must identify on the record, during the deposition or other pretrial
7 proceeding, all protected testimony, without prejudice to their right to so designate other testimony
8 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the
9 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or
10 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information
11 at trial, the issue should be addressed during the pre-trial conference.

12 (c) Other tangible items: the producing party must affix in a prominent place
13 on the exterior of the container or containers in which the information or item is stored the word
14 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
15 the producing party, to the extent practicable, shall identify the protected portion(s).

16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
17 designate qualified information or items does not, standing alone, waive the designating party’s
18 right to secure protection under this agreement for such material. Upon timely correction of a
19 designation, the receiving party must make reasonable efforts to ensure that the material is treated
20 in accordance with the provisions of this agreement.

21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
23 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
24 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
25 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
26

1 challenge a confidentiality designation by electing not to mount a challenge promptly after the
2 original designation is disclosed.

3 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
4 regarding confidential designations without court involvement. Any motion regarding confidential
5 designations or for a protective order must include a certification, in the motion or in a declaration
6 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
7 affected parties in an effort to resolve the dispute without court action. The certification must list
8 the date, manner, and participants to the conference. A good faith effort to confer requires a face-
9 to-face meeting or a telephone conference.

10 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
11 intervention, the designating party may file and serve a motion to retain confidentiality under Local
12 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
13 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
14 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
15 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain
16 the material in question as confidential until the court rules on the challenge.

17 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
18 LITIGATION

19 If a party is served with a subpoena or a court order issued in other litigation that compels
20 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party
21 must:

22 (a) promptly notify the designating party in writing and include a copy of the
23 subpoena or court order;

24 (b) promptly notify in writing the party who caused the subpoena or order to
25 issue in the other litigation that some or all of the material covered by the subpoena or order is
26 subject to this agreement. Such notification shall include a copy of this agreement; and

1 (c) cooperate with respect to all reasonable procedures sought to be pursued by
2 the designating party whose confidential material may be affected.

3 Nothing in this protective order restricts compliance with the Washington Public
4 Records Act.

5 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

6 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
7 material to any person or in any circumstance not authorized under this agreement, the receiving
8 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,
9 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the
10 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,
11 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be
12 Bound” that is attached hereto as Exhibit A.

13 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
14 MATERIAL

15 When a producing party gives notice to receiving parties that certain inadvertently
16 produced material is subject to a claim of privilege or other protection, the obligations of the
17 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
18 is not intended to modify whatever procedure may be established in an e-discovery order or
19 agreement that provides for production without prior privilege review. The parties agree to the
20 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

21 10. NON TERMINATION AND RETURN OF DOCUMENTS

22 Upon the third anniversary after the termination of this action, including all appeals, each
23 receiving party must delete or destroy all confidential material that was produced by other parties
24 or nonparties, including all copies, extracts and summaries thereof, subject to any retention policies
25 or statutes requiring otherwise. Alternatively, the parties may agree upon appropriate methods of
26 destruction.

Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain confidential material.

The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: 2/24/23

/s/ Jay H. Krulewitch
Jay H. Krulewitch, WSBA #17612
Attorney for Plaintiff

DATED: 2/24/23

/s/ Natasha Khanna
Natasha Khanna, WSBA #52870

/s/ Rebecca Widen
Rebecca Widen, WSBA #57339

Seattle City Attorney's Office
Attorneys for Defendants

PURSUANT TO STIPULATION, IT IS SO ORDERED

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

DATED: March 1, 2023.


Robert S. Lasnik
United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Western District of Washington on _____
[date] in the case of *Joshua Brothers v. Esteban Monreal, et al.*, 2:21-cv-01461-RSL. I agree to
comply with and to be bound by all the terms of this Stipulated Protective Order and I understand
and acknowledge that failure to so comply could expose me to sanctions and punishment in the
nature of contempt. I solemnly promise that I will not disclose in any manner any information or
item that is subject to this Stipulated Protective Order to any person or entity except in strict
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____